

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

VEGAS SERENO, LLC,

Plaintiff,

v.

PATRICK HIGGINS, et al.,

Defendants.

2:10-CV-423 JCM (PAL)

**ORDER**

Presently before the court is plaintiff Vegas Sereno, LLC's motion for default judgment against defendants Luis Orozco Madrid and Richard Thomas Habib (collectively, "defendants") pursuant to Federal Rule of Civil Procedure 55. (Doc. #18).

The instant litigation stems from a loan agreement between the plaintiff's predecessors-in-interest and the developer Villa Sereno, LLC. The loan, evidenced by a promissory note, was secured with a recorded deed of trust against unimproved real property in Las Vegas, Nevada. In conjunction with the loan, defendants Patrick Higgins, Luis Orozco Madrid and Richard Thomas Habib each executed a personal guaranty unconditionally guaranteeing Villa Sereno's obligation under the note. Villa Sereno defaulted, and the property entered foreclosure proceedings. However, prior to the actual foreclosure sale, the lenders executed and recorded an assignment of their interests in favor of the plaintiff. Finally, at a public sale, the property sold to the plaintiff. The plaintiff now brings suit against the Higgins, Madrid and Habib, as guarantors of the original loan, for the outstanding deficiency balance in the amount of \$3,018,354.94.

Pursuant to Federal Rule of Civil Procedure 55(a) "[w]hen a party against whom a judgment

1 for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by  
2 affidavit or otherwise, the clerk must enter the party's default." Federal Rule of Civil Procedure  
3 55(b)(2) provides that a court may enter a default judgment after the party seeking default applies  
4 to the clerk of the court as required by subsection (a) of this rule.

5 Here, defendants have been duly served (*see* doc. #4), but have failed to respond to the  
6 complaint. Accordingly, plaintiff applied to the clerk of the court for entry of default against  
7 defendants Luis Orozco Madrid (doc. #9) and Richard Thomas Habib (doc. #10) on August 12,  
8 2010. The clerk entered default against both defendants on August 13, 2010 (doc. #13). Plaintiff now  
9 asks this court to enter a default judgment against defendants in the form of a deficiency judgment  
10 for breach of the guaranty. Plaintiff also seeks leave to file a motion for reasonable attorneys' fees  
11 and costs in accordance with LR 54-16.

12 The plaintiff has alleged specific facts and has also submitted copies of relevant legal  
13 documents – the promissory note (doc. #18-2, ex.1), the assignment of deed of trust and promissory  
14 note to the plaintiff (doc. #18-2, ex. 9), and the personal guaranty obligating the defendants for the  
15 deficiency amount (doc. #18-2, ex.3). Finally, plaintiff has submitted a statement of verification from  
16 the senior vice president and chief financial officer of the member-manager of plaintiff Vegas  
17 Sereno, LLC, verifying the authenticity of these documents and verifying the value of the deficiency  
18 balance on the loan. (Doc. #18-2, ex. A).

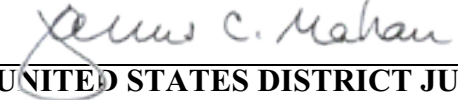
19 Furthermore, the promissory note contains a provision granting reasonable attorneys' fees  
20 from the non-prevailing party in any litigation to enforce the agreement. (Doc. #18-2, ex.1). Plaintiff  
21 has submitted an affidavit from its attorney detailing the attorneys' fees associated with this case in  
22 accordance with Federal Rule of Civil Procedure 55. (Doc. #18-2, ex. A). Based on this information,  
23 the court finds that plaintiff's requested relief is warranted.

24 Accordingly,

25 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for  
26 default judgment (doc. # 18) be, and the same hereby is, GRANTED. Plaintiff is ordered to prepare  
27 an appropriate judgment order.  
28

1 IT IS FURTHER ORDERED that the plaintiff may submit a motion for reasonable attorneys'  
2 fees and costs in accordance with Local Rule 54-16.

3 DATED November 12, 2010.

4  
5   
6 UNITED STATES DISTRICT JUDGE